IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

RSA.No. 599 of 2007()

AS.96/2000 of SUB COURT,NEYYATTINKARA
OS.258/1997 of II ADDL.M.C.,NEYYATTINKARA

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: APPELLANT/PLAINTIFF;

RAJAMMA, D/O.DEENAL, AGED 50,
VALIYAVILA PUTHEN VEEDU, PARASSALA DESOM AND VILLAGE.

BY ADV. SRI.G.SUDHEER

RESPONDENTS: RESPONDENTS/DEFENDANTS:

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1. RAGHAVAN, S/O.SAMUEL, AGED 49,
MANCHAMKUZHI, NADUKANDOM PUTHEN VEEDU,
KARAKODE DESOM AND VILLAGE.

2. SUTHI, S/O.LAZAR, AGED 28,
MADAVILA VEEDU, PARASSALA DESOM AND VILLAGE.

BY ADV. SRI.G.S.REGHUNATH

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 14/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

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R.S.A.No. 599 OF 2007

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DATED THIS THE 14th DAY OF DECEMBER, 2007

JUDGMENT

Plaintiff in O.S.258 of 1997 on the file of Additional Munsiff Court, Neyyattinkara is the appellant. Defendants are the respondents. Appellant instituted the suit seeking a decree for declaration of title and recovery of possession. The case of appellant is that she obtained 39 cents under Ext.A1 purchase certificate issued by the Land Tribunal and while she has been in possession of the property, she alienated 17 cents of that property to her children and strangers and for the purpose of widening the road, surrendered 13 cents on the northern side and the remaining property has been in her possession and enjoyment and it is the plaint schedule property which is shown as 9 cents. Contending that respondents attempted to trespass into the property, a decree for injunction was sought for which was subsequently converted into a suit for recovery of possession on the strength of title. First respondent resisted the suit contending that under Ext.B1 sale deed dated 29.8.1980, the balance extent available to appellant was sold to first respondent and therefore appellant has no title to the property and the suit

is to be dismissed.

2. Learned Munsiff, on the evidence of PW1, Dws 1 and 2, Exts.X1 to X7 and C1 and C1(a), dismissed the suit holding that appellant did not establish the title to the property and under Ext.B1, property was sold to first respondent. Appellant challenged the judgment before Sub Court, Neyyattinkara in A.S.96 of 2000. Learned Sub Judge, on reappreciation of evidence, confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

3. Learned counsel appearing for appellant was heard. The argument of the learned counsel is that courts below should not have upheld the right claimed by first respondent under Ext.B1 when it is not proved to be a genuine registered sale deed executed by appellant. The argument is that court upheld Ext.B1 by comparing the signature seen in the document with the other signatures of appellant and courts should not have compared the signature without the aid of report of an expert and therefore judgments are unsustainable.

4. On hearing the learned counsel, I do not find any substantial question of law involved in the appeal. In the suit, appellant did not seek a declaration with regard to Ext.B1 sale

deed which is purported to be a sale deed executed by appellant in favour of first respondent whereunder ten cents of the property belonging to her was assigned to first respondent for valid consideration in 1980. Appellant cannot ignore Ext.B7. Appellant has claimed title to the property on the basis that she has title to 39 cents and plaint schedule property is the property left with her after alienation and surrender. The specific case in the plaint itself is that she had alienated 17 cents of the property to her children and strangers. It was also admitted by appellant that she surrendered 13 cents of property. She claimed title to the balance 9 cents. Appellant did not produce the documents whereunder she alienated 17 cents of property. Even at the time of evidence, there was no case that the alienations was not 17 cents. Appellant also admitted that 13 cents was surrendered for the formation of the road. Even at the time of evidence, there was no case that the extent surrendered was not 13 cents, but less. Title to plaint schedule property is based on the ground that she obtained title to 39 cents under Ext.A1 and after surrender and alienation, 9 cents remained with her and therefore she has title. The Commissioner in Ext.C1 report found that the total property is not 39 cents but only 31 ½ cents,

out of which 4 ½ cents is the portion seen as part of the road. Therefore even as per the admission in the plaint out of 31 ½ cents available to the appellant under Ext.A1, she surrendered 13 cents and alienated 17 cents. Therefore she could claim title to only the remaining 1 ½ cents. Without producing the sale deeds whereunder she alienated the property as well as identifying the property which was surrendered, appellant cannot claim title to the plaint schedule property, on the basis that it is the remaining property left with her, when it is proved that she had only 31 ½ cents out of which she had alienated 30 cents. Hence appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR, JUDGE

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